ATTORNEY FOR APPELLANTS:

BRYAN M. TRUITT
Bertig & Assoc., LLC
Valparaiso, Indiana

ATTORNEY FOR APPELLEE:

JOHN P. SHANAHAN
Valparaiso, Indiana

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF I.H. AND C.H.,	)	
CHRIS HEATH (Father) and JACKLYN FISHER (Mother),[1]	)	
Appellants-Respondents,	)	
vs.	)	No. 64A04-0805-JV-274
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE PORTER CIRCUIT COURT
The Honorable Mary R. Harper, Judge
The Honorable Edward J. Nemeth, Magistrate
Cause No. 64C01-0704-JT-416

February 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

[1] Jacklyn Fisher is not a party to this appeal. Pursuant to Indiana Appellate Rule 17(A), however, a party of record in the trial court is a party on appeal.

Case Summary

Chris Heath ("Father") appeals the trial court's termination of the parent-child relationship with his daughter, I.H., upon the petition of the Porter County Department of Child Services ("the DCS"). His sole argument is that there is insufficient evidence to support the termination. Because we find that the evidence is sufficient to support the termination of Father's parental rights, we affirm the trial court's decision.

Facts and Procedural History

I.H. was born on October 26, 2004. Her parents are Father and Jacklyn Fisher ("Mother"). Both parents took I.H. to the hospital in January 2005 because she was vomiting excessively. When hospital physicians realized that three-month-old I.H. had only gained one ounce from her birth weight, the child was diagnosed with failure to thrive and admitted to the hospital. Neither parent recognized or took responsibility for the severity of their daughter's condition. Within forty-eight hours, I.H. began to gain weight. The DCS removed I.H. from her parents and placed her with her maternal grandparents. I.H. was adjudicated to be a Child in Need of Services in May 2005. Although the initial case plan was reunification, in May 2006, the DCS filed a petition to terminate the parental rights of both parents. In December 2007, Mother voluntarily relinquished her parental rights. She is not a party to this appeal.

Testimony at the hearing on the petition to terminate Father's parental rights revealed that I.H. has lived with her grandparents and older half-brother for the past three years. She was diagnosed with a pervasive development disorder, an anxiety disorder, sensory deprivation deficits, and a language delay. She participates in occupational,

physical, and speech therapies and is currently developmentally up to age level. She has bonded to her grandparents but not Father. Psychologist Dr. James Kenney, who evaluated I.H., her grandparents, and Father, testified that he is concerned that I.H. would regress if she was removed from her grandparents and placed with Father.

Testimony at the hearing further revealed that although Father completed a required parenting class, the DCS case manager did not believe that Father understood the severity of his daughter's condition and special needs and was concerned about Father's "grandiose ideas" about parenting a special needs child. Tr. p. 58. Specifically, the case manager explained that "when it came down to actually doing or showing that he was able to be competent and to follow through with services for his daughter, he was unable to meet those expectations." *Id.*

Testimony at the hearing also revealed that in the months before the termination hearing, Father missed eight out of eighteen scheduled visits. Father also failed to demonstrate stable housing, employment, and transportation to get I.H. to her weekly therapies. Following the hearing, the trial court issued an order terminating Father's parental relationship with I.H. Father now appeals.

Discussion and Decision

The purpose of terminating parental rights is not to punish parents but to protect their children. *In re Termination of the Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied.* Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parties are unable or unwilling to meet their responsibility as parents. *Id.*

The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied.* Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* The trial court need not wait until the child is irreversibly harmed before terminating the parent-child relationship. *Id.*

This Court will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. *Id.* at 929-30. When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

Indiana Code § 31-35-2-4(b)(2) sets out the following relevant elements that the Department of Child Services must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

> (i) the child has been removed from the parent for at least six months under a dispositional decree:
>
> * * * * *
>
> (B) there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Father contends that there is insufficient evidence to support the termination of his parental rights. Specifically, he contends that the DCS failed to prove that there is a reasonable probability that the conditions that resulted in his daughter's removal will not be remedied. To determine whether the conditions are likely to be remedied, the trial court must judge a parent's fitness to care for the child at the termination hearing and take into consideration any evidence of changed conditions. *D.D.*, 804 N.E.2d at 266. The court must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. *Id.*

Our review of the evidence reveals that I.H. was removed from Father because the child had only gained one ounce from her birth weight in three months, and neither parent recognized the severity of her condition or took responsibility for it. At the time of the hearing, although he had completed a required parenting class, Father still did not understand the severity of his daughter's special needs and was unable to meet expectations that he would follow through with services for her. The psychologist that evaluated Father, I.H., and both grandparents was concerned that I.H. would regress if she was placed with Father. Also, Father was unable to demonstrate stable housing, employment, and transportation to get I.H. to her weekly therapy sessions. He also missed more than half of his scheduled visits with I.H. in the months before the termination hearing. Recognizing our deferential standard of review, we find that this

evidence supports the trial court's finding that there is a reasonable probability that the conditions that resulted in I.H.'s removal will not be remedied.[2]

Father also contends that there is insufficient evidence that termination of the parent-child relationship is in the best interests of I.H. A parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that the continuation of the parent-child relationship is contrary to the child's best interests. *In re A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997). Father has historically been unable to provide adequate housing, stability and supervision, and testimony at the hearing reveals that he is currently unable to do the same. His argument therefore fails.

We further note that the facts of the cases to which Father directs us are distinguishable from the facts before us. Specifically, in *Moore v. Jasper County Department of Child Services*, 894 N.E.2d 218, 228 (Ind. Ct. App. 2008), the mother appealing the termination of her parental rights made "significant strides" in accomplishing the goals put in place by DCS. For example, she married, enrolled in nursing school, obtained her driver's license, regained custody of her two older children, and re-enrolled in counseling. She lived in a large four-bedroom house with her new husband, who was gainfully employed as a welder making approximately $50,000.00 per year. In addition, the mother's new husband was willing to continue to support the

[2] Because Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, the trial court only has to find one of the two elements. Thus, because we affirm the trial court's finding that there is a reasonable probability that the conditions that resulted in the removal of I.H. will not be remedied, we need not address Father's contention that the DCS failed to prove a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of I.H.

mother and her children while the mother attended school, and could provide medical insurance coverage for the mother's children. Here, however, Father continues to struggle with basic issues such as stable housing, employment, and transportation. Further, in *In re R.H.*, 892 N.E.2d 144, 150 (Ind. Ct. App. 2008), the father appealing the termination of his parental rights successfully completed all court-ordered services. Here, although Father completed a court-ordered parenting class, he still did not understand the severity of his daughter's special needs and was unable to meet expectations that he would provide services for her.

We reverse a termination of parental rights "only upon a showing of 'clear error' – that which leaves us with a definite and firm conviction that a mistake has been made." *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and therefore affirm the trial court.

Affirmed.

RILEY, J., and DARDEN, J., concur.